

ORIGINAL
FILE

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Bradenton, Florida)

) MM DOCKET NO. 92-59
)
) RM-7923
)
)
)

RECEIVED

MAY 22 1992

Federal Communications Commission
Office of the Secretary

To: Chief, Allocations Branch

COUNTERPROPOSAL

1. In response to the Commission's Notice of Proposed Rule Making in the above-captioned proceeding, DA 92-356, released March 31, 1992 ("NPRM"), and pursuant to Section 1.420(d) of the Commission's Rules, High Point Broadcast Partners ("HPBP") hereby submits its Counterproposal to the proposal specified in the NPRM. As demonstrated in the attached Technical Statement, the public interest would be better served by the allotment of FM Channel 275A to High Point, Florida as that community's first local broadcast station than by the proposal of Sunshine State Broadcasting Company, Inc. ("Sunshine"), licensee of Station WDUV(FM), to substitute Channel 278C for Channel 277C at Bradenton, Florida in order to allow Sunshine to upgrade that facility's antenna height.

2. By way of background, in 1986, Sunshine filed a modification application to maintain the Channel 277 Class C status for Station WDUV(FM) (File No. BPH-860716IB). The Commission returned the application and Sunshine sought review of that action. During the pendency of that Application for Review, the Sunshine application became short-spaced with the pending rulemaking

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proceeding contemplating the allotment of Channel 276C3 to Winter Park, Florida (MM Docket No. 89-434). Sunshine and the parties in that proceeding entered into a settlement agreement whereby Sunshine dismissed its Application for Review.^{1/} As a result of that dismissal, Sunshine's abandoned its prosecution of its application to maintain the Channel 277 Class C status of Station WDUV(FM), thus downgrading its Bradenton allotment to Channel 277C1, based upon the licensed WDUV(FM) transmitter site. Sunshine then filed its subject Petition for Rulemaking, seeking again to upgrade WDUV(FM), now to Channel 278C.

3. The counterproposal advocated herein by HPBP is mutually exclusive with the subject Sunshine proposal based upon the proposed Channel 278C reference site situated 41.7 kilometers northeast of Bradenton in the Tampa - St. Petersburg de facto antenna farm. Channel 275A is the only FM frequency available for allotment to High Point, Florida.

4. High Point is listed in the 1990 U.S. Census as a Census Designated Place situated in Hernando County, Florida. High Point has a 1990 Census population of 2,814 persons, an increase of 1087 over the 1980 Census figure. High Point has numerous local businesses, its own hospital, library, banking institutions and phone exchanges. Accordingly, High Point meets the Commission's definition of a separate community for FM allotment purposes.

^{1/} See Report and Order, MM Docket No. 89-434 (Naples, Winter Park and Okeechobee, Florida), DA 92-287, released March 19, 1992.

5. Adoption of the HPBP Counterproposal would provide a first local broadcast service to High Point, presently an unserved community. In contrast, Sunshine's proposal would allow the upgrade of an existing facility. As such, HPBP's Counterproposal, which would result in 1 mV/m service to 228,728 persons based on 1990 Census data, is clearly preferable under the Commission's FM allocation standards as a more efficient use of the scarce radio spectrum. FM Channel Policies/Procedures, 90 FCC 2d 88 (1982).^{2/}

6. As demonstrated in the Technical Statement, the Counterproposal complies with all pertinent technical rules and policies. Channel 275A can be so allotted at reference coordinates 28° 27' 40" N and 82° 37' 51" W with a site restriction of 13.7 kilometers southwest of High Point to avoid short-spacing with Station WIVY-FM, Jacksonville, Florida (Channel 275C) and the vacant allotment of Channel 274C3 at Cedar Key, Florida. A 3.16 mV/m contour will be delivered over all of High Point from that site, in compliance with Section 73.315 of the Commission's Rules. The Counterproposal also meets all Section 73.207 spacing requirements.

^{2/} As shown in the Technical Statement, Sunshine's proposed upgrade of Station WDUV(FM) can be accomplished along with the allotment of Channel 275A to High Point in two ways: Channel 278C could be allotted to Bradenton at the present WDUV Channel 277C1 site; or Channel 278C1 could be allotted to Bradenton at the coordinates specified in the subject NPRM.

CONCLUSION

7. In light of the foregoing, the Commission should deny Sunshine's proposal and adopt the following amendment to Section 73.202(b) of the Rules:

HIGH POINT, FLORIDA

Present

None

Proposed

275A

BRADENTON, FLORIDA

Present

277C1

Proposed

278C or 278C1^{3/}

Respectfully submitted,

HIGH POINT BROADCAST PARTNERS

By:


William D. Freedman

Gurman, Kurtis, Blask & Freedman,
Chartered
1400 Sixteenth Street, N.W.
Suite 500
Washington, D.C. 20036

Its Attorney

May 22, 1992

^{3/} See footnote 2, supra.

COMMENTS AND COUNTERPROPOSAL
MM DOCKET #92-59
HIGH POINT BROADCAST PARTNERS
ALLOT CHANNEL 275A
HIGH POINT, FLORIDA
May 1992

Technical Exhibit
TE-1

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COMMENTS AND COUNTERPROPOSAL
MM DOCKET #92-59
HIGH POINT BROADCAST PARTNERS
ALLOT CHANNEL 275A
HIGH POINT, FLORIDA
May 1992

TECHNICAL STATEMENT

1. This Technical Statement and attached exhibits were prepared on behalf of High Point Broadcast Partners ("HPBP") and supports its Comments and Counterproposal in MM Docket #92-59. HPBP proposes to allot Channel 275A to High Point, Florida, as that community's first local broadcast station. The allotment of Channel 275A is mutually exclusive with the proposed allotment of Channel 278C to Brandenton, Florida, as requested by Sunshine State Broadcasting Company, Inc. ("Sunshine"), licensee of WDUV (FM), Channel 277C1, . Brandenton, Florida.

BACKGROUND

2. Sunshine had filed an application for WDUV, File #BPH-860716IB, seeking to maintain its Class C status on Channel 277. That application was returned by the Commission. Sunshine sought review of the Commission action regarding the return its application and subsequent amendment. While the Petition for Reveiw remained pending, the WDUV application for Channel 277C became shortspaced to a proposal to allot Channel 276C3 to Winter Park, Florida (MM Docket #89-434).

3. In order to remove the conflicting proposals in Docket # 89-434, the parties entered into an agreement in which Sunshine asked that their Application for Review be dismissed, thus causing the WDUV application for Channel 277C to be returned. This dismissal, in turn, downgraded the allotment at Brandon from Channel 277C to Channel 277C1 (based on WDUV's licensed site).

4. Sunshine then filed a Petition for Rule Making seeking to upgrade to Channel 278C at Brandon. The reference site is 41.7 kilometers northeast of the community and is located in the Tampa-St. Petersburg de facto antenna farm.¹

DISCUSSION

5. The HPBP proposal, as outlined below, is mutually exclusive with Sunshine's proposal at Brandon, based on the proposed Channel 278C reference site. Channel 275A is the only commercial FM frequency that is available for allotment to High Point, Florida. High Point is listed in the 1990 census as a Census Designated Place located in

¹ Channel 278C could be allotted at the present WDUV Channel 277C1 licensed site.

Hernando county with a population of 2,814 persons. This represents an increase of 1,087 persons over the 1980 census figures.

6. High Point has numerous businesses, a local hospital, library, local banking institutions and its own local phone exchanges. High Point does not presently have any local radio services. Channel 275A would provide this community with its first broadcast outlet.

PROPOSAL

7. Channel 275A can be allotted to High Point, Florida, at reference coordinates North Latitude $28^{\circ} 27' 40''$ and West Longitude $82^{\circ} 37' 51''$, with a site restriction of 13.7 kilometers southwest of the community, in order to avoid shortspacing WIVY-FM, Channel 275C, Jacksonville, Florida, and the vacant allotment of Channel 274C3, Cedar Key, Florida. A 3.16 mV/m contour will be delivered over all of High Point from the herein proposed reference site.

8. Exhibit #1 is a visual depiction of the usable area for Channel 275A at High Point, Florida (assuming Channel 278C is not allotted to Brandenton, Florida, as proposed by Sunshine). Exhibit #2 is a Channel 275A Allocation study which demonstrates that the channel meets present \$73.207 spacing requirements from the reference site.

9. In an effort to accomodate the proposed Bradenton allotment, HPBP notes that Channel 278C could be allotted to Bradenton, Florida, at the present WDUV, Channel 277C1 licensed site and not preclude the allotment of Channel 275A to High Point. As yet another alternative, Channel 278C1 could be allotted to Brandenton in lieu of Channel 278C at the coordinates proposed in the notice of this docket and, again, not preclude the allotment of Channel 275 to High Point.

10. Therefore, High Point Broadcast Partners requests the following amendment to §73.202(b) of the Commission's rules:

HIGH POINT, FLORIDA

Present
None

Proposed
275A

BRADENTON, FLORIDA

Present
277C1

Proposed
278C or 278C1 ²

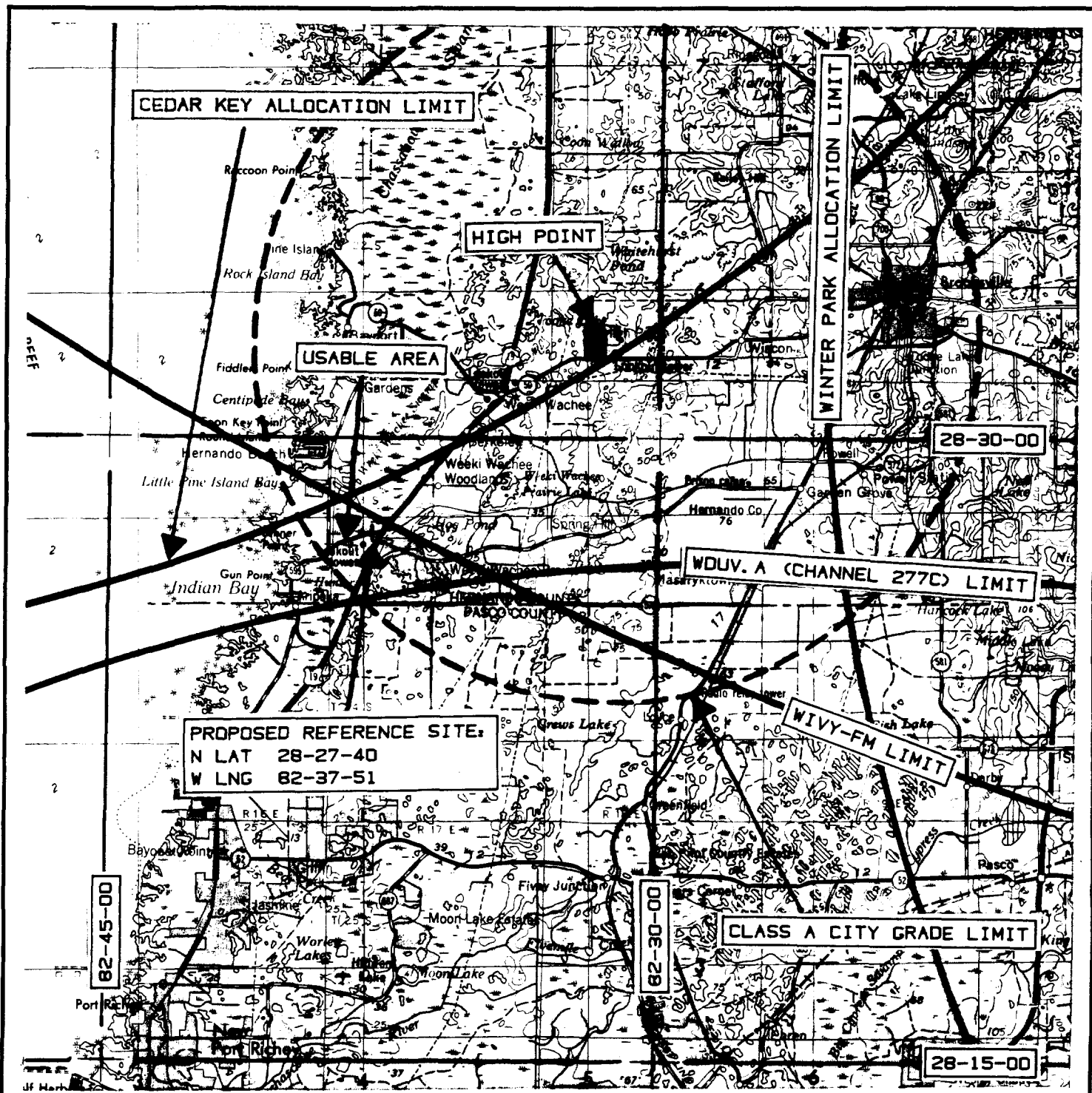
² Channel 278C without the requested site restriction (at the present WDUV licensed site) or Channel 278C1 at the site proposed in the Notice.

PUBLIC INTEREST

11. The allotment of Channel 275A to High Point, Florida, will provide first local service to an unserved community which qualifies on Priority #3 (First Local Service), as compared with the upgrade of an existing facility which would be considered under the fourth priority (Other Matters). The upgrade of WDUV would simply allow an existing station to provide expanded service to a large market already receiving numerous other broadcast services. From the proposed allocation site, Channel 275A would provide 1.0 mV/m service to 228,728 persons, based in 1990 census data. The allotment of Channel 275A, as requested herein, would be a more efficient use of the scarce radio spectrum than would the upgrade of an existing facility.

12. When Channel 275A is allotted to High Point, Florida, HPBP, or one, or a combination of its principals, will file, in a timely manner, an application for construction permit for authority to operate Channel 275A at High Point.

13. The foregoing Technical Statement was prepared on behalf of High Point Broadcast Partners by Bromo Communications, Inc., its Technical Consultants. All information contained herein is true and accurate to the best of our belief and knowledge. Should questions arise during consideration of this proposal, we would welcome the opportunity to discuss the matter by phone at (912) 638-5608.



USABLE AREA CHANNEL 275A

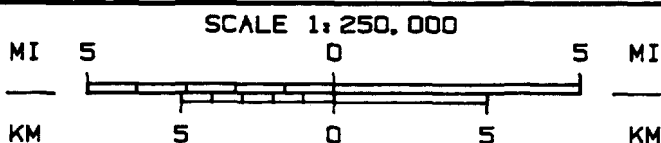
MAP IS A PORTION OF THE 1:250,000 SCALE
U. S. G. S. TARPON SPRINGS, FLORIDA MAP.

MAP ASSUMES THAT CHANNEL 278C IS NOT
ALLOTTED TO BRADENTON, FLORIDA.

EXHIBIT #1

COMMENTS & COUNTERPROPOSAL
MM DOCKET #92-59
HIGH POINT B'CAST PARTNERS
ALLOT CHANNEL 275A
HIGH POINT, FLORIDA

May 1992



BROMO BROADCAST
COMMUNICATIONS TECHNICAL CONSULTANTS
St Simons Island, Georgia Washington, D. C.

ALLOCATION STUDY FOR HIGH POINT, FLORIDA
USING PROPOSED ALLOCATION SITE AS REFERENCE

REFERENCE	CLASS A	DISPLAY DATES
28 27 40 N	Current rules spacings	DATA 04-29-92
82 37 51 W	CHANNEL 275 -102.9 MHz	SEARCH 05-21-92

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
WIVYFM	275C	Jacksonville	FL	27.2	226.24	226.0	0.24 <
AP CY	30 16 34	81 33 53	100.000 kW	309M	140.6	140.5	
		JJ Taylor Companies, Inc.			BMPH880205IA		
WIVYFM	275C	Jacksonville	FL	27.2	226.24	226.0	0.24 <
LI CY	30 16 34	81 33 53	100.000 kW	309M	140.6	140.5	
		JJ Taylor Companies, Inc.			BLH860904KA		
ALOPEN	274C3	Cedar Key	FL	335.6	90.70	89.0	1.70 <
AL N	29 12 24	83 00 51	0.000 kW	0M	56.4	55.3	
		91-118					
WDUV.A	277C	Bradenton	FL	169.6	97.52	95.0	2.52 <
AP CN	27 35 44	82 27 06	100.000 kW	328M	60.6	59.0	
		Sunshine State B/Cing Co., In			BPH860716IB		
WVNM.C	274A	Cedar Key	FL	335.6	90.70	72.0	18.70
CP CN	29 12 24	83 00 51	3.000 kW	100M	56.4	44.8	
		Karen Marie Voyles			BPH881115MD	920505	
>*To Amend to Channel 274C3 Per D91-118							
ALOPEN	276C3	Winter Park	FL	83.9	109.69	89.0	20.69
AL N	28 34 00	81 31 00	0.000 kW	0M	68.2	55.3	
		89-434					
>Site Restricted-Effective 5-4-92-Reserved for WLOQ Per D89-434							
WDUV	277C1	Bradenton	FL	176.9	101.67	75.0	26.67
LI CN	27 32 42	82 34 28	100.000 kW	177M	63.2	46.6	
		Sunshine State B/Cing Co., In			BLH820415BL		
WHPT	273C	Sarasota	FL	162.2	122.54	95.0	27.54
LI CN	27 24 30	82 15 00	100.000 kW	503M	76.2	59.0	
		Paxson Broadcasting of Tampa,			BLH890126KE		
WTRSFM	272C2	Dunnellon	FL	16.0	83.78	55.0	28.78
LI CN	29 11 16	82 23 39	50.000 kW	149M	52.1	34.2	
		Asterisk Communications, Inc.			BLH890705KB		

ALLOCATION STUDY CHANNEL 275A

STUDY ASSUMES THAT CHANNEL 278C IS NOT
ALLOTTED TO BRADENTON, FLORIDA.

EXHIBIT #2

COMMENTS & COUNTERPROPOSAL
MM DOCKET #92-59
HIGH POINT B'CAST PARTNERS
ALLOT CHANNEL 275A
HIGH POINT, FLORIDA
May 1992

BROMO BROADCAST
COMMUNICATIONS TECHNICAL CONSULTANTS
St Simons Island, Georgia Washington, D.C.

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

State of Georgia)
St. Simons Island)
County of Glynn)

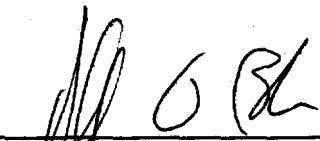
ss:

JEFFERSON G. BROCK being duly sworn, deposes and says that he is an officer of Bromo Communications, Inc. Bromo has been engaged by High Point Broadcast Partners, to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.


The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 21st day of May, 1992.

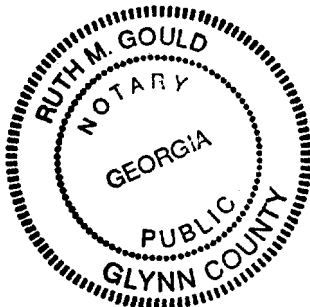


Jefferson G. Brock
Affiant

Sworn to and subscribed before
me this the 21st day of
May, 1992.



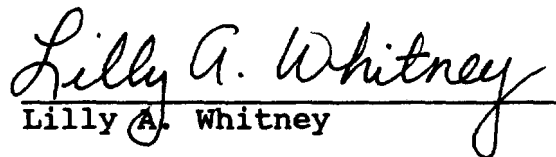
Notary Public, State of Georgia
My Commission Expires: August 21, 1995



CERTIFICATE OF SERVICE

I, Lilly A. Whitney, a secretary in the law offices of Gurman, Kurtis, Blask and Freedman, Chartered, do hereby certify that I have on this 22nd day of May, 1992, had a copy of the foregoing "COUNTERPROPOSAL" mailed by U.S. first class mail, postage prepaid, to the following:

George R. Borsari, Jr.
Borsari & Paxson
2033 M Street, N.W., Suite 630
Washington, D.C. 20036


Lilly A. Whitney